

Remarks

The Applicants respectfully thank Examiner Peter Nerbun for discussing the pending restriction requirement during a telephonic interview with Applicant's attorney, Thomas S. Kim on August 15, 2003. Although an election was not made over the telephone, a general understanding was reached that claim 1 was a generic claim linking species represented by the claims (1, 3-6, 8-15, 21, and 23), which embraces all species 1 through 5. Additionally, the Examiner brought to the attention of Mr. Kim that the other independent claims, 22 and 24, and the claims depending therefrom (claims 16-18 and 25), would require further support for concurrent examination.

The present application has the following claims pending: 1, 3-6, 8-18 and 21-25. The Patent Office requires election under 35 U.S.C. 121, asserting 5 patentably distinct species represented by the following figures:

Species 1 – Fig. 2
Species 2 – Fig.3
Species 3 – Figs. 4-5
Species 4 – Fig. 9A
Species 5 – Fig. 9B.

Applicants traverse this restriction requirement because any and all claims to a species are either linked by a generic claim or are sufficiently similar so that the Patent Office would not be unduly burdened in its search. However, in efforts to fully respond to the restriction requirement, Applicants provisionally elect the claims represented by Species 2. Species 2 are related to stent-graft devices and are covered by claims 1, 3, 4, 5, 8-15, 21, and 23.

Claim 1 represents a generic claim that, if allowed, links the other pending, species claims as spelled out in MPEP §809.02. Claim 1 is directed to an implantable medical device comprising a self-supporting structural member that is formed of laminated layers comprising at least one biocompatible material. All claims depending

from claim 1 have these same limitations and represent specific devices described in the present specification. The other independent claims, claim 22 and 24 and claims depending therefrom (claims 23 and 25), share a similar limitation to claim 1, both containing the limitations of a plurality of laminated layers formed of biocompatible metal or metal-like materials. The foregoing provides support for removal of the present restriction requirement.

Beyond the position that there is at least a generic claim that appropriately links all the various claims covering different species, the various groups asserted by the Patent Office necessitate similar searches that should yield overlapping results; therefore, the search should not unduly burden the Patent Office. The different claimed devices are all formed of laminated layers of biocompatible metal or metal-like materials. In support of this position, the Applicant points to the present patent classification Class 623 and, more specifically, subclass 1.44, which relates to an arterial prosthesis having plural layers. Subclass 1.44 represents the most appropriate subclassification for all the pending claims since they all share the feature of a plurality of laminated layers and, therefore, any search should be limited to this subclass.

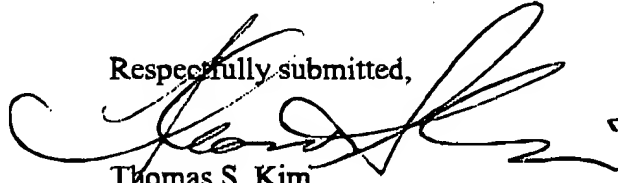
Applicants traverse the current restriction requirement because there is either a generic claim that links all species or the Patent Office would not be unduly burdened in its search since the species are sufficiently similar so that any search performed by the Patent Office would be similar and would yield overlapping results.

Conclusion

This response is timely filed along with the appropriate Extension of Time and fees, however, the Commissioner is hereby authorized to charge any fees that may be required, or credit any overpayment, to Rosenbaum & Associates, P.C. deposit account No. 18-2000.

Should the Examiner require any further information or wish to discuss an aspect of this Response, the Examiner is encouraged to telephone the undersigned at the telephone number set forth below.

Respectfully submitted,



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August 27, 2003

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Docket No. 6006-023